84-259

Office Supreme Court, U.S.
FILED
MAY 4 1984
ALEXANDER L. STEVAS.
CLERK

NO.

In The

SUPREME COURT OF THE UNITED STATES

May Term, 1984

Thalia Hsiung, Petitioner,

v.

State of Washington

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF WASHINGTON

Thalia Hsiung, Pro Se
12834 SE 41st Lane
#E304
Bellevue, Washington 98006
(206) 746-5019

QUESTIONS PRESENTED

1. Whether the petitioner is entitled to equal protection of the laws regardless of her sex, ethnic and national origin under the Fourteenth Amendment Rights.
2. Whether the petitioner is entitled to be free from the action taken under 'color of law' by the officers and employees of the State of Washington who deprived the petitioner of her federally protected civil rights. Which violates the Federal Civil Rights Acts, Rule 57.
3. Whether the petitioner is entitled to be free from conspiracies of the state employees which deprived the petitioner of her federally protected civil rights under 42 USC § 1985.
4. Whether an illegal seizure of the petitioner, and an illegal unwarranted search in petitioner's car and purse give rise to a cause of action for damages under the Fourth Amendment Rights.

TABLE OF CONTENTS

	Page
Questions Presented.....	i
Table of Contents	ii
Table of Authorities	1
Opinion below	3
Jurisdiction	3
Statement	5
1. Major Issues of This Case	
2. Statement	
Reasons for Granting the Petition	11
Conclusion 18	

Appendix A: Opinion of the Court of Appeals of the State of Washington.

Appendix B: Opinion of the Supreme Court of the State of Washington.

Appendix C: Affidavit of Nancy Raudebaugh.

Appendix D: King County Department of Public Safety Offense Report.

TABLE OF AUTHORITIES

CASES: Page

Baldwin v Morgan (1958, CA5 Ala)
251 F2d 780 12

Baskin v Parker (1979, Ca5 La)
588 F2d 965, 790 16

Daly v Pedersen (1967, DC Minn)
278 F Supp 88 15

Geach v Moynahan (1953, CA7 Ill)
207 F2d 714 12

Henry v Cogle (1973, CA6 Tenn)
482 F2d 137 12

Huey v Barlogas (1967, NR Ill)
277 F Supp 864 14

Jennings v Shuman (1977, CA3 Pa)
567 F2d 1213 13

Kedra v Philadelphia (1978, ED Pa)
454 F Supp 652 12

Pritt v Johnson (1976, MD Pa)
264 F Supp 167 12

Smith v YMCA (1972, CA5 Ala)
462 F2d 634, 649 17

Somers v Strader (1977, MD NC)
435 F Supp 1184 13

Stringer v Dilger (1963, VA10 Colo)
313 F2d 536 12

Terry v Adams, 345 U.S.
461, 473 (1953) 13

Thompson v Baker (1955, DC Ark)
133 F Supp 247 12

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Page

Vick Wo v Hopkin 118 U.S. 356, 373-374 (1866) 12

CONSTITUTION, STATUTES, AND REGULATIONS:

U.S. Constitution

Fourth Amendment 4,15

Fifth Amendment 4

Fourteenth Amendment 4,12

Federal Civil Rights Acts:

Rule 57 4,12

Rule 126 15

Rule 127 15,16

Rule 143 13

Rule 210 16

Rule 265 16

Washington State Constitution:

Article 1 14

28 USC § 1257 (3) 3

42 USC § 1985 4,14

OPINION BELOW

The opinion of the Court of Appeals of the State of Washington, Division One, is not officially reported, and is reproduced as Appendix A.

The opinion of the Supreme Court of the State of Washington is that the petitioner's challenge to her conviction "is basically factual. A reviewing court, however, is not in a position to retry the case or to overturn a lower court's determination based on conflicting evidence." The opinion of the Supreme Court of the State of Washington is not officially reported, and is reproduced as Appendix B.

JURISDICTION

The judgement of the Supreme Court of Washington was entered on February 16, 1984. The jurisdiction of this court is invoked under 28 USC § 1257 (3).

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

The Fourth Amendment to the U.S. Constitution provides in relevant part:

> The right of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.

The Fifth Amendment to the U.S. Constitution states in pertinent part:

> No person shall....be deprived of life, liberty, or property without due process of law...

The Fourthteenth Amendment to U.S. Constitution provides in relevant part:

> It nullifies and makes void all state legislation and state action of every kind, which impairs the privileges and immunities of citizens of the U.S...or which denies to any of them the equal protection of the laws.

The Federal Civil Rights Acts, Rule 57 provides in pertinent part:

> Misuse of power possessed by virture of state or local authorization and made possible only because the wrongdoer is clothed with the authority of the state is action taken under 'color of law'.

42 USC § 1985 deals with conspiracies to interfere with civil rights is derived from an Act of Congress passed July 31, 1861.

STATEMENT

The major issues of this case are as follows:

1. Throughout the trial at the NE District Court, there were many obvious inconsistancies and conflicts among the oral statements, and many of the oral statements were not in correspondence with the written statements. But such important and obvious aspects of trial were completely ignored.
2. The error of the trial court becomes even more obvious as Judge Graves had confirmed the fact that the petitioner's arms were bruised and she was deceived, and the fact that no one else had had any bodily injury. Yet no one was charged with simple assault except the petitioner who was deceived, humiliated, abused and injured, was charged with simple assault.
3. There were conspiracies among the Animal Control Shelter employees (King County), the police (King County), the prosecutor (King County), the judge (King County), and the witnesses whom were contacted by the ACS employees prior to the trial.

4. There was an illegal arrest, and an illegal unwarranted search through the petitioner's car and purse.

Statement

1. Throughout the trial at the NE District Court, there were many obvious inconsistancies and conflicts among the oral statements, and many of the oral statements were not in correspondence with the written statements. Among this type of instances, few are listed as follows:
   a. Judy Sullivan's oral statements were quite different with her written statements, both in the sequence of the incident and the content of the incident. She stated that I touched her. Yet, none of the ACS employees, her co-workers, nor any of the witnesses testified that I had any contact with her. Tape #82-895, and please also see Appendix C(No.7).
   b. During the trial, Susan McDermott stated that the petitioner touched her. But on the written statement, she was listed as a witness. Please see Appendix D. No

one, including Nancy Raudebaugh who was in the room throughout the incident, witnessed that the petitioner was any where but near her. Tape #82-895.

c. Officer Webster made the written statement by what the ACS employees told him. But his last written statement was "Suspect advised to contact the NE District Court to file/pursue reverse assault charges." Please see Appendix D.

All these and many other inconsistencies and conflicts among the oral and written statements were not brought up during the trial. My counsel, Jim Wu, did not have any of the written statements in front of him. I was not aware nor knowledgable about the fact that the written statements should be included. It surprises me now, as I am learing about this, that Judge Graves did not take such important and obvious aspects of trial into account. Why?

In any event, all of these inconsistenc-

ies and conflicts among the oral statements, and between the oral and the written statements strongly indicate that most of these testimonies were untruthful or lies. Thus, the trial at the NE District Court was far from been fair. Why did Judge Graves make such an unfair, unjust judgement?

2. On August 10, 1982, I went to the ACS for no purpose other than to have my dog to be adopted by my neighbor, Nancy Raudebaugh. I was denied of having my dog to be adopted by Nancy, for someone else was interested in adopting the dog. But Judy Sullivan informed me quite differently on the phone. Then I was not permitted to contact the prospective owner. Yet, there is no such rule or regulation whereby the original owner is not allowed to contact the adopting owner. In addition, I was not allowed to use the phone to call the police, Tape #82-895, and Appendix C, No 6. Furthermore, I was refused the opportunity to explain to the two men who came in to drag me out, Tape #82-895. One of

them, David Gumm, claimed that I kicked him as he dragged me out, please see Appendix D. Throughout the incident, I was subjected to continuous humiliation, verbal and physical abuse and assault. Judge Graves pointed out that I was deceived, Tape #82-896 (080), and the fact that I had had bruises resulting from this incident, Tape #82-895 (678).

As I was learning to write the Brief of Appellant for the Superior Court, I studied quite many simple assault cases in the King County Court Record Room. Almost all of those simple assault cases had had bodily cuts,bleedings, etc.. None, not even one case was like this; whereby no one had had any injury except my arms were bruised. Yet, I, been deceived, humiliated, and abused, was charged with simple assault.

3. After the first police, Officer Webster, was shown the bruises on my arms, and took the information he asked for, Officer Iness, who just finished talking with the ACS em-

ployees, came over, took my purse and put handcuff on me without a word, Tape #82-895. Then, he dragged me into his car which was quite a distance away. After all these humiliation and abuses, they proceed to search through my car and my purse. Are these obvious violations of the Constitution and Laws of the State and the U.S.?

4. The Witnesses were contacted by the ACS employee prior to the trial. And there were conspiracies among the ACS employees (King County), the prosecutor (King County), and the judge (King County). For example, prosecutor Patrick used leading and suggestive questions quite often throughout the trial. These questions often suggested the answers desired. For instance, Prosecutor Patrick asked the ACS employees such as "...Were you trying to explain to her?" Tape #82-895 (187); "How many times she was asked to leave?" Tape #82-895 (154), etc..

There are many other evidences indicat-

ing the conspiracies among the ACS employees, the prosecutor, the judge, the police. All of them are King County employees.

5. At the Superior Court, Judge Dore commented on this case, "There is no perfect trial." It is true that not all trials are perfect. But this trial is so obvious far from fair let alone to be perfect. Besides, what would be the ultimate purpose of having the higher courts; such as Superior Court, Court of Appeals, etc.? Are these higher courts to pursue the imperfect trials to be as nearly perfect as possible?

The responses from the Court of Appeals of the State and the Supreme Court of Washington indicated that they have failed to mention the violations of Constitution and Laws of the State and the United States in this case. Please see Appendix A and B.

REASONS FOR GRANTING THE PETITION

As I am writing this petition, I pray that

this petition is not just for myself, but for the fellow citizens and the betterment of the United States, the nation in which I have great faith.

There are several violations of Constitution and Laws of the State and the United States involved in this case:

. After all of the above facts, Judge Graves intentionally made an unjust judgement. This is in violation of the Fourteenth Amendment to the Constitution of the U.S.: Equal protection of the laws. It provides the following:

> (T)hough the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically unjust and illegal discriminations between persons in similiar circumstances material to their rights, the denial of equal justice is still within the prohibition of the Constitution. Vick Wo v Hopkins 118 U.S. 356, 373-374 1866.

Federal Civil Rights Acts, Rule 57, states:

> Misuse of power possessed by virture of state or local authorization, and made possible only because the wrong-

doer is clothed with the authority of the state, is action taken under 'color of law'. Also see: Geach v Moynahan (1953, CA7 Ill) 207 F2d 714; Pritt v Johnson (1976, MD Pa) 264 F Supp 167; Robert v Trapnell (1962 ED Pa) 213 F Supp 49; Thompson v Baker (1955, DC Ark) 133 F Supp 247; Baldwin v Morgan (1958, CA5 Ala) 251 F2d 780; Stringer v Dilger (1963 CA10 Colo) 313 F2d 536; Henry v Cogle (1973m CA6 Tenn) 482 F2d 137; Kedra v Philadelphia (1978, ED Pa) 454 F Supp 652.

Justice Frankfurter once wrote:

> The vital requirement is State responsibility, that somewhere, somehow, to some extent there be an infusion of conduct by officials, panoplied with state power, into any scheme to deny protected rights. Terry v Adams, 345 U.S. 461, 473 (1953).

Furthermore, Federal Civil Rights Acts, Rule 143 - Freedom from Malicious Prosecution; Malicious Abuse of Process; Unlawful Attachment. This Rule provides the following;

> A person has the right to be free from malicious prosecution by individuals acting under 'color of law', and defendants violating this right are liable in actions under Rule 1983. Somers v Strader (1977, MD NC) 435 F Supp 1184. And;
> Rule 1983 action is available against person acting under colow of law for malicious abuse of process, and the presence or absence of probable cause is irrelevant. Jennings v Shuman (1977 CA3 Pa) 567 F2d 1213.

2. The conspiracies among the ACS employees (King County), the prosecutors (King County), Judge Graves, and the witnesses have violated the following Constitution and Laws of the State and the United States:

According to ER - 612 (c);

> Leading questions should not be used on the direct examination of a witness except as may be necessary to develop his testimony.

But throughout the trial, Prosecutor Patrick often used leading questions which suggested the answers desired.

Under 42 USC § 1985 - Rights to be free from conspiracies:

> This section, dealing with conspiracies to interfere with civil rights is derived from an Act of Congress passed July 31, 1961.
> And;
> The purpose of the statute has been said to be provision of a cause of action for individuals deprived of their federal rights by conspiracies of either public officials or private persons. Huey v Barlogas (1967, NR Ill) 277 F Supp 864.

3. The illegal arrest of the petitioner, and the illegal unwarranted search through the petitioner's car and purse have violated

the following Constitution and Laws of the State and the United States:

Washington State Constitution: Article 1 provides in relevant part:

> Section 2: The Constitution of the U.S. is the supreme law of the land.
>
> Section 3: No person should be deprived of life, liberty, or property without due process of law.
>
> Section 7: No person shall be disturbed in his private affairs, or his home invaded without authority of law.

The U.S. Constitution: Fourth Amendment provides in relevant part:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.

Federal Civil Rights Acts: Rule 126 provides:

> Under Section 1983, a person can be safe guarded in his right to be free from all illegal seizures of his person. A federal court typically states; "As a general rule, an arrest lacking an appropriate warrant or without probable causes, constitutes a violation of due process, giving rise to a claim under Section 1983. Daly v Pedersen (1967, DC Minn) 278 F Supp 88.

Rule 127 provides:

> When persons acting under 'color of law' have perpetrated illegal searches upon persons or property, the victims can secure redress in a civil action based upon Section 1983.

The whole incident seemed to be quite beyond one' comprehension. Especially it took place in the U.S.A.. As I am preparing this petition, I have read more and more of the Constitution of the United States, and the Federal Civil Rights Acts. I am very much enlightened by the fact that how the government of the United States intends to be just, protective, and loving for each of the citizens of this nation. It is therefore, my hope that I could have equal share what our government provides for each one of us; justice, protection, love, etc..

According to the following Federal Civil Rights Acts, I could claim compensations if I do so desire:

Rule 127 provides in pertinent part:

When persons acting under 'color of law'

have perpetrated illegal searches upon persons or property, the victims can secure redress in a civil action based upon Section 1983.

Rule 210 provides in relevant part:

> Compensatory damages for emotional distress, embarrassment and humiliation are available in Section 1983 actions without proof of intent. The Court of Appeals for Fifth Circuit states: "Personal humiliation, embarrassment and mental distress imposed as a result of the deprivation of constitutional rights are injuries whose redress in damages is considered compensatory." Baskin v Parker (1979, CA5 La) 588 F2d 965, 970 (citing cases).

Rule 265 provides in relevant part:

> Where defendants operating under 'color of law' have been guilt of racial discrimination in denying important rights and opportunites to plaintiffs and their class, the federal courts have very broad opportunities to provide a variety of relief. The Court of Appeal for the Fifth Circuit is typical when it states that "federal courts have an affirmative duty to order broad remedial relief where necessary to correct the effects of a pattern and practice of racial discrimination." Smith v YMCA (1972, CA5 Ala) 462 F2d 634, 649.

However, it is not my intention nor desire to have anyone reprimanded in this case, nor do I desire any compensation, even though I have spent a great deal of money on this case.

It is my sincere hope that the judgement on this case will be rightfully done, or corrected.

I have been a faithful, loyal citizens of the United States, and have always respected, obeyed, therefore, never violated any law of the U.S.. Not only that, I have been a faithful Christian for twenty-two years.

CONCLUSION

Again, I am writing this petition out of my love for this nation, a nation I have greatly cherished and am proud of.

May the suppressed be helped through the Constitution of the U.S.. The Constitution which has indeed manifested the wisdom of true justice, protection, loving for the citizen of this nation and for all mankind.

Dated this 26th day of April, 1984.

Respectfully Submitted,

Thalia Hsiung

Thalia Hsiung

12834 SE 41st Lane
#E304
Bellevue, Washington 98006
(206) 746-5019

IN THE COURT OF APPEALS

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. THALIA HSIUNG, Appellant.	No. 1308-1-I Commissioner's Ruling Denying Discretionary Review

Petitioner Thalia Hsiung seeks discretionary review of a superior court decision affirming her conviction in NE District Court for simple assault. Petitioner has filed a motion for discretionary review and the State has filed a response.

The criteria for determining whether to accept discretionary review of a superior court decision which reviewed a decision of a court limited jurisdiction are set forth in RAP 2.3 (d) which provides:

> (1) If the decision of the superior court is in conflict with a decision of the Court of Appeals or the Supreme Court, or
> (2) If a significant question of law under the Constitution of the State of Washington or of the United States is involved, or

(3) If the decision involves an issue of public interest which should be determined by an appellate court, or

(4) If the superior court has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by the court of limited jurisdiction, as to call for review by the appellate court.

In her motion for discretionary review petitioner contends: (1) there was no evidence to sustain her conviction for simple assault; (2) the evidence showed that she was humiliated, abused and assaulted; (3) there were conspiracies among the the Animal Shelter employees, the King County police, the prosecutor and the witnesses; and (4) she was denied effective assistance of counsel. These same contentions were considered and rejected by the superior court.

In viewing the record in light of the contentions raised, the Commissioner determines under RAP 2.3 (d) discretionary review should be denied.

There is more than sufficient evidence under the test of State v Green, 94 Wn.2d 216, 616 P. 2d 628 (1980), to establish that a rational trier of fact could have found the essential elements of the crime of assault beyond a reasonable doubt. Several witnesses for the State testified that petitioner either struck or kicked them, and that they did not strike her. The determination of whether these witnesses were telling the truth was matter for the trial court. As was stated in State v Green, Supra at 221:

> This inquiry does not require the reviewing court to determine whether it believes the evidence at trial established guilt beyond a reasonable doubt. "Instead the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Jackson v Virginia, [443 U.S. 307, 61 L. Ed. 2d 560, 99 S. Ct. 2781 (1979)].

Further, the record does not support the claim that petitioner's counsel was ineffective. The record demonstrates that counsel

cross-examined the witnesses and presented the conflicting testimony as to what transpired. The trier of fact in resolving the credibility of the witnesses chose to believe the State's witnesses, not the petitioner. A claim of ineffective assistance counsel is not to be judged by the result of the trial. Petitioner has the burdent of establishing in light of the entire record that counsel was ineffective. State v Jury, 19 Wn. App. 256, 576 p. 2d 1302 (1978). She has not sustained this burden.

Since petitioner has not satisfied the criteria of RAP 2.3 (d), the motion for discretionary review is denied.

Done this 23rd day of September, 1983.

/s/ Larry A Jordan

Court Commissioner

THE SUPREME COURT OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. THALIA HSIUNG, PETITIONER.	No. 50146-7 RULING DENYING MOTION FOR DISCRETIONARY REVIEW

Thalia Hsiung was convicted in NE District Court of simple assault. That conviction was affirmed by the King County Superior Court. Ms. Hsiung thereafter sought review by Division One of the Court of Appeals. That court determined that the case did not satisfy any of the review standards set forth in RAP 2.3 (d) and therefore denied review. Ms Hsiung now moves for discretionary review by this court.

Ms. Hsiung's challenge to her conviction is basically factual. A reviewing court, however, is not in a position to retry the case or to overturn a lower court's determination based on conflicting evidence. Because of this the Court of Appeals did not err in concluding

that this case did not warrant further review under the standards of RAP 2.3. (d). For the same reason further review by this court is not warranted under the standards of RAP 13.5 (b).

The motion for discretionary review is denied.

Dated at Olympia, Washington this 16th day of February, 1984.

/s/ Illegible
Commissioner

AFFIDAVIT OF NANCY RAUDEBAUGH

STATE OF WASHINGTON)
)
COUNTY OF KING) ss.

I, Nancy Raudebaugh, being duly sworn upon oath, hereby depose and say;

1. I know Thalia Hsiung as a neighbor and acquaintance.
2. On August 10, 1982, at her request, I accompanied her to the King County Animal Countrol Shelter in Redmond to adopt her dog.
3. Judy Sullivan, employee on duty at the shelter, refused to allow me to adopt the dog because there was another interested party.
4. Apparently as a result of prior telephone conversations she had with Ms. Sullivan, Ms. Hsiung felt that she had been deceived and that we had come for nothing.
5. The ensuing argument between Ms. Hsiung and Ms. Sullivan became protracted and both sides raised their voices.

6. Ms. Hsiung demanded to call the police but Ms. Sullivan would not allow her to do so.

7. Ms. Hsiung did not hit, kick or even touch Ms. Sullivan.

8. Ms. Hsiung tried to explain her side of the story to one of the two male employees of the Shelter, who came in to remove her physically, but to no avail.

/s/ Nancy Raudebaugh

SWORN AND SUBSCRIBED to before me this 7ht day of October, 1982.

/s/ Karen L. Gilbert

NOTARY PUBLIC in and for the State of Washington, residing at Seattle.

Please see the reduced copy on next page.

Appendix C

Reduced copy. Please see the reproduced copy on the previous page.

AFFIDAVIT OF NANCY RAUDEBAUGH

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I, Nancy Raudebaugh, being duly sworn upon oath, hereby depose and say:

1. I know Thalia Hsiung as a neighbor and acquaintance.
2. On August 10, 1981, at her request, I accompanied her to the King County Animal Control Shelter in Redmond (the "Shelter") to adopt her dog.
3. Judy Sullivan, employee on duty at the Shelter, refused to allow me to adopt the dog because there was another interested party.
4. Apparently as a result of prior telephone conversations she had with Ms. Sullivan, Ms. Hsiung felt that she had been deceived and that we had come for nothing.
5. The ensuing argument between Ms. Hsiung and Ms. Sullivan became protracted and both sides raised their voices.
6. Ms. Hsiung demanded to call the police but Ms. Sullivan would not allow her to do so.
7. Ms. Hsiung did not hit, kick, or even touch, Ms. Sullivan.
8. Ms. Hsiung tried to explain her side of the story to one of the two male employees of the Shelter, who came in to remove her physically, but to no avail.

Nancy L. Raudebaugh
Nancy Raudebaugh

SWORN AND SUBSCRIBED to before me this 7th day of October, 1982.

Karen L. Gilbert
NOTARY PUBLIC in and for the State of Washington, residing at Seattle.

KING COUNTY DEPAPTMENT OF PUBLIC SAFETY

OFFENSE REPORT

#82-161034

Assault, Cimple	5110 192 Place NE		
08/10/82 17:45	08/10/82 18:20	Tuesday	
V1	Sullivan, Judy S	Statement	*KCAC 788-1158
V2	Gumm, David E.	Statement	*KCAC 8831811
W1	Legg, Todd K.	Statement	*KCAC 8831811
W2	McDermott, Susan		*KCAC 885-4044
W3	Raudebaugh, Nancy	Statement	R.N. 641-3673
W4	P. Tellekamp		883-1811

NARRATIVE: Suspect came to King County Animal Shelter this afternoon to get her impounded dog. A disagreement insued concerning come adoption/paper/fees etc.. Apparently suspect became quite irrational and started screaming. When Animal

Control Officers could not calm her down, they attempted to escort her out of the building. When they did so, V1 and V2 were assaulted by suspect.
Suspect advised and acknowledged miranda, gave statement. Suspect cited simple assault and released.
W2 and W4 not available for written statements.
Suspect advised to contact N.E. District Court to file/pursue reverse assault charges.

* King County Animal Control